

Assembly Bill No. 518

CHAPTER 423

An act to amend Section 19801 of the Business and Professions Code, and to amend Section 337j of the Penal Code, relating to gaming, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1998. Filed with Secretary of State September 1, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 518, Brown. Gaming clubs.

Existing law, the Gambling Control Act, states various findings and declarations of the Legislature regarding the public policy of the state regarding gambling.

This bill would make technical, nonsubstantive changes to these findings and declarations.

Existing law prohibits the playing, operation, or conducting of several specified games, and banking or percentage games generally. Existing law defines the term "controlled game" as any game of chance, including a gambling device, that is played for currency, check, credit, or any other thing of value, that is not prohibited and made unlawful by statute or local ordinance. Existing law provides that it is unlawful for any person to collect any fee in connection with a controlled game unless the method of collection conforms with regulations adopted by the Division of Gambling Control of the Department of Justice of the California Gambling Control Commission. Existing law also provides that until these regulations become operative, an owner licensee may collect fees in the same manner as that establishment collected fees as of January 1, 1997, provided that this method was expressly permitted under existing local regulations, the method meets certain specified requirements, including that the fee is fixed in advance of the game, the fee is the same for all players and is not deducted from the amount wagered, and there is no minimum wager on any game, round, or hand, or the method is otherwise authorized by law.

This bill would prohibit any person from collecting fees in connection with controlled games except as authorized by regulations of the Division of Gambling Control or the Gambling Control Commission, but would authorize fees to be collected in the same manner as they were on a specified date, subject to certain conditions and only until these regulations are adopted. The bill would dispositively require that patrons be given ample notice regarding the collection of fees, that fees must be determined and

collected prior to the start of play, that fees may not be calculated as a portion of wagers made or winnings earned exclusive of charges or fees for the use of space and facilities, and that fees may be assessed at up to 3 different rates per table. The bill would declare that the Legislature's intent in enacting these provisions is to codify the holding in a specified case. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 19801 of the Business and Professions Code is amended to read:

19801. The Legislature hereby finds and declares all of the following:

(a) The longstanding public policy of this state disfavors the business of gambling. State law prohibits commercially operated lotteries, banked or percentage games, and gambling machines, and strictly regulates parimutuel wagering on horse racing. To the extent that state law categorically prohibits certain forms of gambling and prohibits gambling devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.

(b) Gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.

(c) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

(d) It is the policy of this state that gambling activities that are not expressly prohibited or regulated by state law may be prohibited or regulated by local government. Moreover, it is the policy of this state that no new cardroom gambling establishment may be opened in a city, county, or city and county in which a cardroom gambling establishment was not operating on and before January 1, 1984, except upon the affirmative vote of the electors of that city, county, or city and county.

(e) It is not the purpose of this chapter to expand opportunities for gambling, or to create any right to operate a gambling enterprise in this state or to have a financial interest in any gambling enterprise.



Rather, it is the purpose of this chapter to regulate businesses that offer otherwise lawful forms of gambling games.

(f) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that such gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

(g) Public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture or distribution of permissible gambling equipment.

(h) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

(i) To ensure that gambling is conducted honestly, competitively, and free of criminal and corruptive elements, all licensed gambling establishments in this state must remain open to the general public and the access of the general public to licensed gambling activities must not be restricted in any manner, except as provided by the Legislature. However, subject to state and federal prohibitions against discrimination, nothing herein shall be construed to preclude exclusion of unsuitable persons from licensed gambling establishments in the exercise of reasonable business judgment.

(j) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

(k) The location of lawful gambling premises, the hours of operation of those premises, the number of tables permitted in those premises, and wagering limits in permissible games conducted in those premises are proper subjects for regulation by local governmental bodies. However, consideration of those same subjects by a state regulatory agency, as specified in this chapter, is warranted when local governmental regulation respecting those subjects is



inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.

(l) The exclusion or ejection of certain persons from gambling establishments is necessary to effectuate the policies of this chapter and to maintain effectively the strict regulation of licensed gambling.

(m) Records and reports of cash and credit transactions involving gambling establishments may have a high degree of usefulness in criminal and regulatory investigations and, therefore, licensed gambling operators may be required to keep records and make reports concerning significant cash and credit transactions.

SEC. 2. Section 337j of the Penal Code is amended to read:

337j. (a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game.

(2) To receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game.

(3) To manufacture, distribute, or repair any gambling equipment within the boundaries of this state, or to receive, directly or indirectly, any compensation or reward for the manufacture, distribution, or repair of any gambling equipment within the boundaries of this state.

(b) It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(c) It is unlawful for any person to knowingly permit any gambling equipment to be manufactured, stored, or repaired in any house or building or other premises that the person owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(d) Any person who violates, attempts to violate, or conspires to violate this section shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

(e) (1) As used in this section, “controlled game” means any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.

(2) As used in this section, “controlled game” does not include any of the following:

(A) The game of bingo conducted pursuant to Section 326.5.

(B) Parimutuel racing on horse races regulated by the California Horse Racing Board.

(C) Any lottery game conducted by the California State Lottery.

(D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.

(f) It is unlawful for any person to collect any fee in connection with a controlled game authorized pursuant to Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code unless the method of fee collection conforms to regulations adopted by the Division of Gambling Control of the Department of Justice or the California Gambling Control Commission. Until those regulations become operative, an owner licensee may continue to collect fees, in accordance with any of the following provisions:

(1) In the same manner as fees were collected in the establishment as of January 1, 1997, if the method of fee collection is permitted by ordinance, resolution, letter, or other written authorization of the local governmental entity having regulatory jurisdiction or law enforcement authority over the gambling establishment.

(2) In the same manner as fees were collected in the establishment as of January 1, 1997, if all of the following are true:

(A) The amount of the fee is fixed in advance of the game.

(B) There is no minimum wager in any game, round, or hand.

(C) No fee is deducted from the amount wagered.

(D) In any game or round, the same fixed fee is collected from all players at the table.

(E) The method of fee collection has not been challenged by, and is not prohibited by any ordinance or resolution of, the local governmental entity having regulatory jurisdiction or law enforcement authority over the gambling establishment.

(3) Using any method of fee collection that is otherwise authorized by law.

(g) This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. No fee may be calculated as a portion of wagers made or from winnings earned. Fees charged for all wagers shall be determined and collected prior to the start of play of any hand or round. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than three collection rates may be established per table. This legislation codifies the holding in *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, as to the

collection of player fees in licensed gambling establishments, that no fee shall be calculated as a portion of wagers made or winnings earned, exclusive of charges or fees for the use of space and facilities.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the law with regard to the collection of player fees in gambling establishments and to address the legality of those fees, at the earliest possible time, it is necessary that this act take effect immediately.

